

These are the new changes without the previous mark-ups.

HSC REGULATION 500M. Assisted Living Methodology (10/03)

SECTION I - DEFINITION

- A. ASSISTED LIVING FACILITY** means any building or buildings, section or distinct part of a building, ~~boarding home, home for the aged, or other residential facility~~, whether operated for profit or not, which undertakes through its ownership or management to provide assisted living services for a period exceeding twenty-four (24) hours to more than three (3) adult residents of the facility who are not relatives of the owner or administrator. Assisted living facility includes those facilities, which provide assisted living services either directly or through contractual arrangements or which facilitate contracting in the name of residents.
- B. ABANDONMENT** *means the act of an owner/operator to discontinue the operation of a long-term care facility without the sale of that facility to a responsible purchaser, or without ensuring the placement of all facility residents in appropriate long-term care facilities prior to discontinuing operations of the facility.*

SECTION II- SERVICE AREA ~~is the county.~~

The term "Service Area" as used herein means the county in which the beds or facility is located or is to be located.

SECTION III- NEED

POPULATION BASED NEED

This methodology projects the need for Assisted Living beds at ~~45~~ 30 beds per 1000 persons who are 65 years old and older. *Need will consider the number of proposed and existing ALF beds and the number of proposed and existing RCF beds in a county.* Need will be projected five years forward using the most recent census data available from the UALR Institute for Economic Advancement.

~~B. UTILIZATION BASED NEED~~

- ~~A. Assisted Living Facilities may acquire 10% of their licensed beds or 10 beds, which ever is greater, if the applicant:~~
- ~~1. has an average occupancy of at least 90% or greater in the 2 most recent survey inspections available from the Department of Human Services Office of Long Term Care.~~
 - ~~2. has no approved but unlicensed beds at the time of the application.~~

- ~~3. has no current Class A or Class B deficiencies from the DHS Office of Long Term Care.~~

SECTION IV- SIZE

~~A. Minimum Size~~

~~While there is no required minimum size, the recommended minimum size for achieving basic operational efficiency is 40 beds. Smaller projects may be more feasible for counties or communities that do not have the population base to support a 40-bed facility. However, smaller facilities have higher costs and applicants proposing a facility smaller than 40 beds will be subject to a higher level of justification under the Market Study and the Financial Feasibility Section of the application.~~

~~Maximum Size~~

~~A maximum of 75 beds will be awarded to any one applicant per service area, per cycle under the population based methodology~~

SECTION V- CONVERSIONS

~~Nursing Homes that wish to convert beds to Assisted Living beds may convert a minimum of 10 beds and a maximum of 80 beds.~~

SECTION VI- PRIORITY

~~A. Priority for new construction or expansion will be given to an applicant who demonstrates that:~~

- ~~1. The proposed application will serve low income elderly residents. *~~
- ~~2. Existing assisted living beds do not meet the needs of the low income elderly in the service area and~~
- ~~3. Is able to provide documentation of pending application with Arkansas Finance Development Authority for tax credits.~~

~~* According to the National Housing Survey of Adults Age 60+: opinions, Attitudes, Perceptions and Behaviors, The greatest demand for seniors housing is from people with lower incomes.~~

SECTION VII- UNFAVORABLE REVIEW

~~Existing facilities will have an unfavorable review if the following quality of care standards are not met:~~

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- ~~1. No Nursing Home will be awarded a permit of approval if the existing facility has had an H level or higher deficiency according to the Office of Long Term Care in any inspection within the last 12 months preceding the date the application is placed under review or from the date the application is placed under review until the final decision of the Health Services Commission.~~
 - ~~2. No Assisted Living or Residential Care Facility will be awarded a permit of approval if the existing facility has had more than two (2) Class A or Class B violations pursuant to ACA § 20-10-205 in any inspection within the last 12 months preceding the date the application is placed under review or from the date the application is placed under review until the final decision of the Health Services Commission.~~

A. Existing long-term care facilities will have an unfavorable review if the following quality of care standards are not met:

1. No Nursing Home will be awarded a permit of approval for Assisted Living if the existing facility has had:

- a. Two Class A violations as found in Ark. Code Ann. § 20-10-205 according to the Office of Long Term Care in any inspection within the last 12 months preceding the date the application is filed with the Health Services Permit Agency; or,
- b. Two Class B violations as found in Ark. Code Ann. § 20-10-205 according to the Office of Long Term Care in any inspection within the last 12 months preceding the date the application is filed with the Health Services Permit Agency; or,
- c. A Class A and a Class B violation as found in Ark. Code Ann. § 20-10-205 according to the Office of Long Term Care in any inspection within the last 12 months preceding the date the application is filed with the Health Services Permit Agency; or,
- d. An H level or higher deficiency, according to the Office of Long Term Care in any inspection within the last 12 months preceding the date the application is filed with the Health Services Permit Agency; or,
- e. The facility's Medicaid or Medicare provider agreements terminated within twelve (12) months preceding the date the application is filed with the Health Services Permit Agency.

2. No Assisted Living or Residential Care Facility will be awarded a permit of approval for Assisted Living if the existing facility has had:

a. Two Class A violations as found in Ark. Code Ann. § 20-10-205 according to the Office of Long Term Care in any inspection within the last 12 months preceding the date the application is filed with the Health Services Permit Agency; or,

b. Two Class B violations as found in Ark. Code Ann. § 20-10-205 according to the Office of Long Term Care in any inspection within the last 12 months preceding the date the application is filed with the Health Services Permit Agency; or,

c. A Class A and a Class B violation as found in Ark. Code Ann. § 20-10-205 according to the Office of Long Term Care in any inspection within the last 12 months preceding the date the application is filed with the Health Services Permit Agency.

B. An application will be denied if the owner/operator applying for a Permit of Approval has abandoned one or more long-term care facilities in Arkansas or in another state.

C. The Agency may consider an applicant's compliance or enforcement history in determining whether to grant a Permit of Approval

SECTION VI. ~~IX~~ - REVIEW CRITERIA

~~A.~~ The Agency and the Commission will utilize the following criteria in the review process.

A. ~~1.~~ Whether the proposed project is needed or projected as necessary to meet the needs of the population. Criteria includes ~~a review of a detailed market feasibility study.~~ business plan that includes a narrative description with supporting data and analysis that illustrates the need for an Assisted Living Facility in the proposed service area. Data and analysis must also include the following:

- Population characteristics of the market or service area by age, gender, income, morbidity, functional impairments. There must also be a narrative description of the relationship between this demographic data and the population expected to enter the proposed Assisted Living Facility.
- Market and Payor mix for intended facility.
- Proximity to other facilities including, Nursing Homes, Hospitals, or clinics.
- Current local conditions that favor the occupancy or sustainability of the proposed facility.
- Local support for the project

- Transportation access to the facility
- Resident access to other local health, recreational, or other services.
- Special needs of this community.
- Special features of this facility.

2. B. Whether the project can be adequately staffed and operated when completed. Criteria include projected sources of staffing.
3. C. Whether the proposed project is economically feasible.
4. D. Whether the project will foster cost containment.

Footnotes:

The Arkansas Legislature adopted Act 1230 in 2001 that established Assisted Living in Arkansas. The Act "encourages the development of innovative and affordable facilities particularly for persons with low to moderate incomes." Because federal laws and rules prohibit Medicaid from paying room and board costs other than in a nursing home, developing affordable Assisted Living is challenging. The main vehicle for developing affordable Assisted Living is the Low Income Tax Credit program. The Arkansas Finance Development Authority (AFDA) recognizes Assisted Living as a priority for Arkansas and has created a "set-a-side" from its Tax Credits specifically for affordable Assisted Living. However, Tax Credits alone are usually not adequate to build an affordable Assisted Living facility. Other financing mechanisms must be "layered" or combined with the Tax Credits. Chief among these are the HOME program and grants from the Federal Home Loan Bank. Unfortunately, the Federal Home Loan Program, the AFDA Tax Credit Program, and the Health Permit Agency all have different time tables for accepting and awarding applications. This makes the creation of affordable Assisted Living almost impossible. To eliminate barriers to affordable Assisted Living and to encourage innovative and affordable models as called for in Act 1230, the Arkansas Health Services Permit Agency (HSPA) will give priority to an applicant that receives Tax Credits from AFDA. AFDA Tax Credits are awarded on a competitive basis. Applicants must submit a marketing study documenting the need for affordable Assisted Living. Therefore, HSPA will accept approval of Tax Credits as establishing a need for affordable Assisted Living.